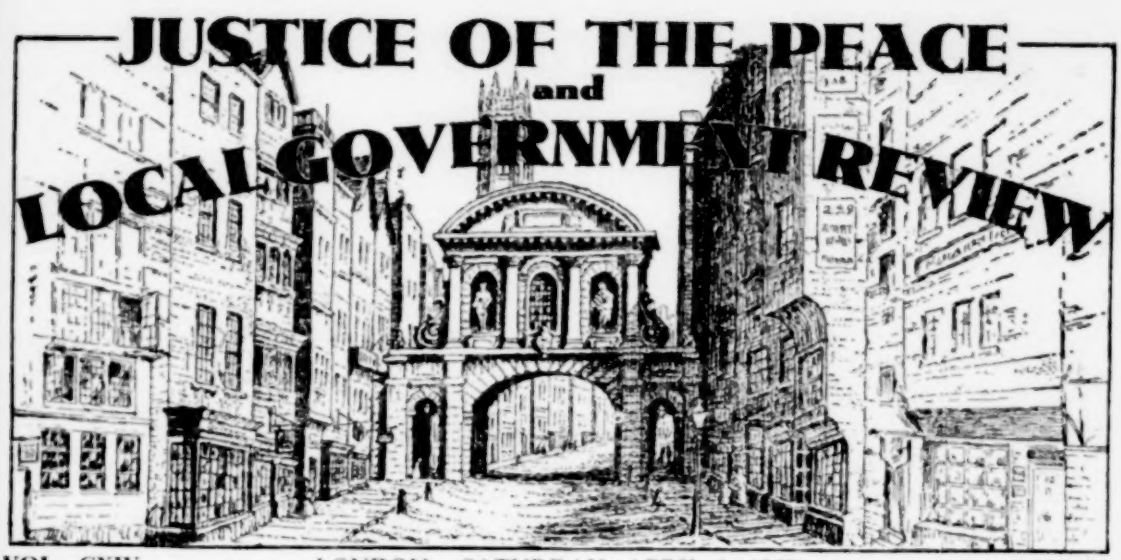

VOL. CXIV. LONDON: SATURDAY, APRIL 1, 1950. No. 13

CONTENTS

REPORTS

Official Advertisements, Tenders, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Miscellaneous Advertisements 24 words 6s. (each additional line 1s. 6d.) Box Number 1s. extra. *Latest time for receipt—9 a.m. Wednesday.*

None of the vacancies in these columns relates to men and women coming within the provisions of the Control of Employment Order, 1947, S.R. & O., No. 2021, or the vacancy is for employment excepted from the provisions of the Order.

LANCASHIRE (No. 2) COMBINED PROBATION AREA

Female Probation Officer

APPLICATIONS are invited for the above whole-time appointment. The Officer will be assigned to the Lancaster, Morecambe, and surrounding area.

Applicants should be between the ages of 25 and 40 except in the case of a whole-time serving officer.

The appointment will be subject to the Probation Rules, 1949, and the Probation Officers' (Superannuation) Order, 1948. The salary will be in accordance with the prescribed scale and mileage allowance in connexion with the use of a car will be paid. The successful applicant will be required to pass a medical examination.

Applications stating age, qualifications and experience, together with copies of not more than two recent testimonials, must reach the undersigned not later than 14 days after the publication of this advertisement.

W. A. L. COOPER,
Clerk of the Committee for the above Area.
Justices' Clerk's Office,
Lancaster Road,
Preston.

METROPOLITAN BOROUGH OF WANDSWORTH

Second Assistant Solicitor

APPLICATIONS are invited for the established post of Second Assistant Solicitor in the town clerk's department. The salary paid will be in accordance with Grade A.P.T. 8 of the National Scheme of Conditions of Service, *viz.*, £715 to £790 inclusive.

Applicants must have had considerable experience in the town clerk's department of a local authority and possess a sound knowledge of municipal law and practice, including advocacy and the acquisition of land for all purposes.

The appointment will be subject to the provisions of the Wandsworth Borough Council (Superannuation) Act, 1909 to 1940, to the passing of a medical examination by a medical officer nominated by the Council and to the National Scheme of Conditions of Service. Canvassing will disqualify. Applicants must state, in the order given, full name and address, age, whether married or single, war service, date of admission, present appointment and salary, previous appointments, particulars of experience, date on which appointment could be taken up, and whether to their knowledge they are related to any Member or to any senior officer of the Council. Applications, giving the names of two persons to whom reference may be made, should reach the Town Clerk, Municipal Buildings, Wandsworth, S.W.18, not later than April 19, 1950, the envelope being endorsed "Second Assistant Solicitor."

R. H. BERMAN,
Town Clerk.
Municipal Buildings,
Wandsworth, S.W.18.

THE LANCASHIRE No. 3 COMBINED PROBATION AREA COMMITTEE

Full-time Male Probation Officer

A VACANCY exists in the above Combined Area which comprises the County Borough of Blackpool and the Petty Sessional Division of Kirkham, for a full-time male probation officer.

Candidates must be not less than 23 nor more than 40 years of age, except in the case of a serving full-time probation officer or a person who has satisfactorily completed a course of approved training.

The appointment will be subject to the Probation Rules, 1926-1948 and the salary will be in accordance with the scale set out in such Rules, subject to superannuation deductions.

Applications stating age, qualifications, experience and present salary (if already serving) together with the names of not more than two persons to whom reference may be made must be sent to the Clerk to the above Combined Area at No. 55, Cookson Street, Blackpool, not later than April 22, 1950.

COUNTY BOROUGH OF SOUTHAMPTON

Appointment of Legal Assistant to the Clerk to the Justices

APPLICATIONS are invited from solicitors for the whole-time appointment of Legal Assistant to the Clerk to the Justices.

Applicants must have had extensive experience of magistreial law and practice and be capable of acting as Clerk of the Court without supervision. The successful candidate will be required to assist in a major degree in duties connected with Licensing Planning, the Juvenile Court and Probation Committee.

The salary scale for this appointment accords with Grade X of the National Scheme of Conditions of Service, namely, £850 rising by increments of £50 to £1,000 per annum, the commencing salary to be fixed within this scale having regard to previous experience and ability. The appointment, which will be terminable by three months' notice on either side, will be subject to the Local Government Superannuation Act, 1937, and the successful candidate will be required to pass a medical examination.

Applications, stating age, present position, qualifications and experience, together with copies of three recent testimonials, should be delivered to the Clerk to the Justices, Law Courts, Southampton, not later than Saturday, April 22, 1950, in envelopes endorsed "Legal Assistant."

ARTHUR J. ROGERS,
Clerk to the Justices.
Magistrates' Clerk's Office,
Law Courts,
Southampton.

CITY OF ST. ALBANS

Assistant Solicitor or Legal Assistant

APPLICATIONS are invited for the appointment of: Assistant Solicitor—Grade A.P.T. Va (£550–£610), or Legal Assistant (unadmitted)—Grade A.P.T. IV (£480–£525).

Experience in conveyancing (including compulsory acquisition) is essential. Local Government experience and that of County and Magistrates' Courts will be an advantage.

Housing accommodation will be available if required.

The appointment will be subject to (*a*) one month's notice on either side (*b*) the National Conditions of Service (*c*) the Local Government Superannuation Act, 1937 and (*d*) the successful candidate passing a medical examination.

Applications stating age, qualifications and experience, enclosing one copy testimonial and giving the names of two persons to whom reference may be made, must reach the undersigned not later than Saturday, April 15, 1950.

Canvassing will disqualify.

W. B. MURGATROYD,
Town Clerk.
Town Clerk's Office,
St. Peter's Street,
St. Albans.

COUNTY BOROUGH OF DEWSBURY

Town Clerk's Department

APPLICATIONS are invited for the appointment of Assistant Solicitor, at a salary within the scale £550 x £20—£610 x £25—£710. Commencing salary to be fixed according to experience.

Last day for receipt of applications April 8, 1950.

Further particulars can be obtained from the undersigned.

A. NORMAN JAMES,
Town Clerk.
Town Hall,
Dewsbury.
March 24, 1950.

BOROUGH OF RAMSGATE

Appointment of Assistant to Clerk to Justices

APPLICATIONS are invited for the appointment of male assistant to the Clerk to the Borough Justices.

Applicants should have general magisterial experience, be able to keep the accounts, court registers and other records and to take depositions on a noiseless typewriter.

The salary will be at the rate of £400 per annum and the successful candidate will be required to pass a medical examination.

Housing accommodation can be made available if required.

Applications, stating age, qualifications and experience, accompanied by copies of not more than three recent testimonials and endorsed "Assistant to Justices' Clerk" must be received by me not later than Friday, April 7, 1950.

E. A. KNIGHT,
Clerk to the Justices.
The Court House,
Princes Street,
Ramsgate.

Justice of the Peace
and
Local Government Review

[ESTABLISHED 1837.]

VOL. CXIV. No. 13. LONDON: SATURDAY, APRIL 1, 1950 Price 1s. 8d.

Pages 162-173 Offices: LITTLE LONDON, CHICHESTER, SUSSEX. [Registered at the General Post Office as a Newspaper]

NOTES of the WEEK

Evidence of Confession to Two Crimes

There is a general rule that upon the trial of a person for a criminal offence, evidence may not be given to show that he has committed other offences for the purpose of proving that he is of a disposition making it likely that he would commit the offence with which he is charged. There are circumstances in which evidence of the commission of similar acts is admissible, but in general a person charged with an offence is entitled to object to evidence being given that he has committed another offence, even if he is to be tried for that also. The rule is an instance of the principle that nothing should be given in evidence which is not relevant to the charge which is being investigated and which might be of prejudice to the defendant.

The principle must not be carried too far, however. This is clear from such cases as *R. v. Sims* [1946] 1 All E.R. 697, and it is illustrated by the recent case of *R. v. Evans* (1950) 209 L.T. 157. This was a charge of murder. The prisoner was indicted for the murder of his wife and of his child, and upon the charge of murdering the child evidence was given of an alleged confession to both crimes. The defence objected, but the Court of Criminal Appeal held the evidence to be relevant and therefore admissible.

As has been said, the mere fact that evidence may involve proof that a defendant has committed an offence other than that for which he is being tried does not make such evidence inadmissible, if it has probative value by reason of a nexus between the transactions. In some cases two offences really form part of one transaction and it is practically impossible to separate the items of evidence which relate to one or the other. In this type of case, it often happens that a defendant has made a statement or confession which must be read as a whole to be intelligible.

It would be otherwise if it were alleged that a defendant, on being arrested, and being desirous of clearing up everything that could be brought against him, made a statement confessing to a number of crimes wholly unconnected with each other, committed over a long period, and possibly quite different from each other in nature. Then, no doubt, the prosecution would tender in evidence separate portions of the confession upon the trial of the charges to which they related.

Serious Crime

We dealt on p. 136 *ante* with some of the arguments for and against reintroduction of corporal punishment as a remedy for crimes of violence, arguments which have since been developed fully in the House of Lords where, as was expected, the Government held out against a return to the powers available to judges and quarter sessions before the Criminal Justice Act, 1948. We fancy that the governmental statement that, since the abolition of flogging for these offences, their number had actually diminished will be less convincing to many people than the remark of one of the Judges of Assize that, whatever their number, the offences are tending to increase in violence. As against this, there is a full and fair-minded summing-up in the first leading article in *The Times*, March 20, 1950. We think it worth repeating what we said at the end of our earlier remarks, that a prosecutor or witness may often prefer to know that a violent criminal, against whom he has given evidence, is behind bars for a long time, rather than that the culprit will be about again in a few months, possibly revengeful for having suffered corporal punishment. An interesting side-light on the controversy was afforded at Surrey Quarter Sessions, where the learned chairman and deputy chairman complained that London criminals got to work in Surrey, because they believed they would receive lighter punishment than if their depredations were committed within the area of the Central Criminal Court. This seems far fetched; here and there an experienced and comparatively educated man may make such a calculation but, if there is a tendency for Londoners to regard Surrey as a fruitful field for looting, we suspect it is less for the cause stated than because they think of Surrey as Blucher spoke of the London of his day. They may also think of it as an area where police are not so thick upon the ground as in the more worth-while parts of London. On the whole, the most cheery thing which has been said, in this revival of an age-long controversy, is to be found in a daily newspaper (not *The Times*) where it is suggested that Lord Goddard, and others who think like him, should be required to study the success achieved in the Soviet Union, in restoring the hardened criminals of the Tsarist régime to a life of useful citizenship without the use of violence towards them.

Report of the Pharmaceutical Society

The annual report of the Registrar of the Pharmaceutical Society of Great Britain for the year 1949 includes a number of statistical tables which are of interest to pharmacists, for whom they are intended, but it also includes items of interest to a much wider public, as showing how the Society protects the public in various ways.

The Society undertakes a certain number of prosecutions for offences connected with the sale of poisons and of medicines, and practically all their prosecutions are successful. That its vigilance is not without effect can be inferred from the fact that while approximately the same number of shops have been visited as in the previous year the occasions upon which it has been necessary to institute proceedings are fewer. This also applies in respect of warning letters issued by the Council, of which 124 have been issued as against 143 where contraventions of a minor character or in mitigating circumstances were reported.

The policy of giving warning, rather than prosecuting, where circumstances justify such a course, is also indicated in a paragraph dealing with offences under the Pharmacy and Medicines Act, 1941, committed by market traders. Doubtless it is often difficult for some of these to realize that they are offending, and they ought to be grateful for being enlightened by a professional body.

A New Way with Old Offenders

Addressing a meeting of the Royal London Discharged Prisoners' Aid Society, the chief magistrate of the metropolitan magistrates' courts referred to the alarming increase in serious crime in the age group twenty-one to thirty, which was not merely an increased total but represented a very large increase per 100,000. Sir Laurence asked whether it was not time perhaps to make the conditions of treatment less pleasant in the case of short sentences. That is a practical question, and not a harsh one. It is generally considered that a short sentence offers no opportunity of reformative treatment such as is attempted in the case of those sentenced to substantial terms, and therefore the object of the sentence must be to deter the offender from repeating his offence and to be an object lesson to potential offenders. Prison should therefore be unpleasant enough to make the prisoner resolve to avoid it for the future. One hears so often that the experience of many is that prison was not so bad as they thought it would be, and that it was possible to settle down to it.

Another important suggestion made by Sir Laurence was that a persistent offender should receive an indeterminate sentence, and that while in prison he should be employed at wages payable for the job. Such wages would be applied partly for his own keep, partly for the benefit of his dependants, partly to compensate any victim who has suffered through his offence, and the rest to build up some savings against the day of his discharge, so that he could not thereafter say that on leaving prison he was not given a chance.

There are obvious difficulties to be overcome, and serious opposition to be reckoned with, but these should not prove fatal to a practical and constructive plan for treating prisoners on lines that would offer inducements to hard work—preferably piece-work—maintain more hopeful relations between a prisoner and his family, enable the man himself to recover some measure of self-respect and look forward hopefully to the day of his release. If he is so far wedded to crime that these things do not appeal to him, the best protection for the public is to keep him in custody as long as possible, and not to give him remission of part of his sentence for no better reason than that he has not broken any prison rule or regulation. We cannot help thinking remission is made too easy. It should be hard-earned, and the "old hand" should not be able to count upon serving perhaps three-quarters or two-thirds of the sentence a judge has considered appropriate to his offence, so long as he just keeps out of trouble.

Juvenile Offenders

The problem of the young offender and the best way of dealing with him continues to engross public attention, as is shown by the number of conferences devoted to it and the output of correspondence in the press.

Sir Leo Page, whose witty letter to *The Times* a few weeks ago, gave rise to many a chuckle as well as to some serious thought, has contributed an article on the subject to the February number of *The Nineteenth Century and After*.

At the outset, Sir Leo, who is never afraid of controversy, states plainly why he is disturbed. Admitting that the problem is old, he contends that it has become more disquieting because offences by juveniles are more numerous than before, more serious and are being tackled largely on the wrong lines. He recognizes that all wars cause crime and that the increase during the war years was only to be expected. But, he says, the war has been over for five years and it is necessary to look deeper for the causes of the present prevalence of juvenile crime. The general lowering of moral standards is beyond dispute. Upon this he observes: "Once men and women begin any general neglect of the laws of God it will not be very long before they show a similar disregard for the laws of man: the distinction between the two is altogether too subtle for the masses of the people." He goes on to give some startling figures as to the increase in thefts on the railways and adds that this is not irrelevant to the question of juvenile crime, because the standards of conduct a child sees in his parents and his home life has a great deal to do with his own. Religion, says Sir Leo Page, has almost ceased to be a force over large areas, and parental guidance is quite out of fashion. What remain are the boys instincts, including the fear of being caught.

Borough and District Elections for 1950

We have received a number of requests from our subscribers for a calendar by Mr. R. N. Hutchins, LL.B., assistant solicitor, Derbyshire county council, for the local elections to be held later this year, based on similar lines to Mr. Hutchins' calendar for the 1949 local elections, which we printed at 113 J.P.N. 203, *et seq.* In response to these requests, this journal has again made arrangements with Mr. Hutchins to prepare a similar calendar, incorporating the consolidated legislation affecting local elections, and which we hope to publish in our next week's issue. We have little doubt that this calendar will prove as useful and as informative to our readers as its predecessor.

The calendar will be printed in the pages of the journal, and for the convenience of subscribers, the publishers have arranged for it to be reprinted, which will be available immediately following publication, price 9*d.* each or 7*s.* 6*d.* per dozen.

Rates upon Crown Property

A circular from the Ministry of Health, issued in anticipation of the transfer of valuation from assessment committees to the Inland Revenue, refers to the procedure for obtaining Treasury contributions in lieu of rates upon Crown property. It was the practice for rating authorities to apply to the Treasury Valuer, with whom it rests, since the coming into force of the valuation provisions of the Local Government Act, 1948, as it rested previously, to decide upon what value his contribution will be made. Though this is superficially open to objection, and it might be thought that there ought to be an independent valuation, we believe it is true to say that, for a good many years past, the attitude of the Treasury Valuer has been more satisfactory to rating authorities than it was (say) at the beginning of the century. Under the new valuation procedure, it is open to rating authorities to ask the valuation officer of the Board of Inland Revenue to take part with them in discussions with the Treasury Valuer. The Board of Inland Revenue have agreed to this procedure, and rating authorities should accordingly make direct arrangements with the valuation officers in their own districts. There may be cases where the opinion of those officers will carry more weight with the Treasury Valuer than the rating authority's own representations.

BREACH OF PROBATION: TAKING INTO CONSIDERATION

By J. V. ROBSON

Before the provisions of the Criminal Justice Act, 1948, relating to probation, came into force, it was a common occurrence that when a probationer committed a further offence during his period of probation, this breach was taken into consideration when determining his sentence for the further offence committed. It is to be regretted that despite s. 8 of the Act, which came into force on August 1, 1949, this procedure still appears to be in use, certainly in courts of summary jurisdiction with which this article is concerned. Whether this is from usage or convenience the writer is not in a position to say. The procedure even before the probation provisions of the 1948 Act were in force has been the subject of doubts and criticism (*see* articles at 111 J.P.N. 415 and 112 J.P.N. 584). Whether it was formerly correct or not, it is the writer's contention that in view of s. 8, the practice of taking a breach of probation into consideration has now no foundation and there should be no such thing.

For present purposes let us consider what the position is with regard to the normal procedure of taking cases into consideration. Briefly, the position is, that where an offence other than the one for which the accused is convicted is still untried and is admitted by him and he desires that it should be taken into consideration in determining his sentence, it may properly be taken into consideration if the offence is similar to the one for which the accused has been convicted and is one which the court has jurisdiction to deal with. This practice, which has no authority by statute, is one which has grown with the years and is an admirable one in proper circumstances. It is an administrative action and was adopted largely to enable an accused person to start with a clean sheet after being dealt with by the court. It also avoids multiplicity of proceedings.

Under the Probation of Offenders Act, 1907, as amended by the Criminal Justice Act, 1925, where there was a breach of probation the original offence could only be dealt with by the court making the order. The position was therefore that when a probationer, bound over by a court, was convicted of a further offence by another court, this latter court could do nothing about the original offence for which the probationer would have to appear before the court placing him on probation. To circumvent this, the procedure was adopted of the second court, with the consent of the court making the order, taking into consideration the breach of probation and usually nothing further was done about the probation. It has often been known for a court making a probation order subsequently to take a breach of its own probation into consideration.

In this article we are dealing with the commission of a further offence during probation, and not with a breach of requirements the procedure for which is laid down in s. 6 of the Criminal Justice Act, 1948, and which is hardly likely to become the subject of being taken into consideration. Before the present Act, there was a single procedure available in respect of two types of breaches of probation—the commission of a further offence and a failure to observe conditions. In fact, the commission of a further offence was usually deemed to be a failure to comply with the condition of the probationer's recognizance that he be of good behaviour or lead an honest life. Now, separate procedures are laid down for dealing both with the probationer who fails to comply with a requirement of his order and for him who is convicted of a further offence committed during his probation period.

What is the position now under s. 8 of the Criminal Justice Act, 1948? The original court, or the supervising court, has, in the case of an order made by a summary court, full power of dealing with a probationer convicted of a further offence for the offence for which the order was made (subs. 5). In addition, a third court of summary jurisdiction which has convicted a probationer, may, with the consent of the original or supervising court, deal with him *for the offence for which the order was made* in any manner in which the court could deal with him if it had just convicted him of that offence (subs. 7). In a proper case, of course, the original or supervising court may feel it should deal with the original offence itself, in which case the question of taking a breach into consideration cannot arise.

There are, in effect, therefore, three courts which can deal with the probationer for his original offence instead of one as under the old Act. Specific powers are bestowed on each court, by statute, equally convenient as taking a breach into consideration and undoubtedly more effective. The probationer can be dealt with for the two offences at the same court at the same time. There is no multiplicity of proceedings. As all courts have power to deal with the original offence where is the need for a breach to be taken into consideration?

Critics of this principle may say that in a normal case there is no advantage in this procedure over the old and in fact it is creating an extra charge against the probationer to be dealt with by the court which can be avoided. That it can be avoided there is no doubt, but whether the procedure is sound is a different matter. The authority and procedure are laid down by statute and should be followed. The old procedure was based on case law and this statute must be deemed to override it so far as probation is concerned. The obscure method of asking the court to take a breach of probation into consideration, sometimes by the police, sometimes by the probation officer and sometimes by the representation of the clerk of the justices, often with the verbal consent only of the court making the order (and this is what usually happens) is never very satisfactory. To say that, in some cases, dependent upon the facts, it may be convenient to deal with a breach on the commission of a further offence by having this taken into consideration and in others by sentencing for the original offence is again to lead to that obscurity and divergence of practice which in the writer's view the present legislation was aiming to avoid. It seems logical that where an Act prescribes a procedure it intends it to be followed, and not by-passed by another procedure which in the past, while dealing with the matter expeditiously has, amongst other things, left a trail of "loose-ends." It is believed the section was introduced to overcome those very difficulties which were apparent before its introduction.

When a breach of probation is treated as having been taken into consideration the usual questions follow. "Has the probationer been dealt with for the original offence?" On the argument that it is the breach only and not the original offence that has been taken into account obviously the original offence has not been dealt with. In any case, on the authority of *R.* v. *Nicholson* (1947) 112 J.P. 1, apparently the probationer is still liable to be brought before the court for it. The normal type of case of taking outstanding charges into consideration is quite different from the case of a breach. In the former a specific charge is disposed of (subject to *R.* v. *Nicholson*, *supra*).

In the latter no one, on reflection, can be quite sure what has been disposed of. How much more consistent and preferable for the court, without leaving any doubts at all, to deal with the original offence. A further question asked is "Is the probation at an end?" This is often asked by the probationer and even by the police and probation officer and maybe others. If it is only the breach that is taken into consideration without dealing with the original offence then clearly this offence has not been touched and the probation order made on it is continued. This is no minor consideration. Whether or not a person remains on probation with its consequent requirements is obviously an important one. In practice, the probation is usually deemed to have ceased but there is nothing in law to substantiate this. Section 5 (4) of the Criminal Justice Act, 1948, states that a probation order ceases to have effect when a probationer is dealt with for the original offence. How much more desirable it is to follow this course.

In the past, and this may arise in the future, some courts when asked to take into consideration a breach of probation have declined to do so being in doubt as to their legal position. They will be more entitled to do so now when they have specific powers of dealing with the original offence. Any argument that because a court now has power to deal with the original offence it has power to take it into consideration is surely getting behind the intention of the legislature. The terms of the section would seem to preclude this and on interpretation one feels that a court does not take into consideration an offence on which it has "just convicted." *R.* v. *Nicholson* may again be referred to here.

It seems to be just as easy, and preferable, when a probationer is convicted of a further offence, to charge him forthwith under s. 8, always remembering that the third court of summary jurisdiction requires consent for this. To deal properly with cases taken into consideration one must remember that consent must also be obtained, the necessary form must be prepared and a copy served on the defendant and the probationer asked in open court if he wishes the charge to be so dealt with.

Section 8 has also been explicit in the case of a person placed on probation by a higher court and subsequently convicted of a further offence by a court of summary jurisdiction. In these cases the machinery is there for committal. It seems in these cases, irrespective of other considerations of law, that a higher court having placed a person on probation should be the one to deal with him for his original offence and that the practice of taking a breach into consideration in these cases is not desirable and does not appear to be permissible. This follows from the section which gives no power to a court of summary jurisdiction of dealing with the original offence for which a probationer is placed on probation by a higher court.

In the best interest of probation it is regrettable that the old procedure should continue and a probationer not be dealt with for the offence for which he was put on probation, he having broken his trust by committing another offence. To treat it as having been taken into consideration may be a convenient and easy way out for the courts and officials concerned. Can it be disputed that the probationer also considers it an easy way out? The extraordinary case where a second offence has been committed and no action is taken on the original offence because it is felt the probation is not a failure and should continue, should not be overlooked.

When persons are put on probation they are usually warned that they can be subsequently dealt with for the offence for which the probation order is made and it seems highly desirable that the provisions of probation contained in the Act should be strictly administered and that on the commission of a further offence the probationer should answer to the consequences. Probation is often regarded by the public as a "let off." That attitude may be justified if no action is taken on the original offence after commission of a second.

The question of proof and procedure in these cases has already received attention in this Journal and one can do no more than refer to 113 J.P.N. 657 and p. 1 *ante*.

APPEALS ON PROVISION OF DUSTBINS

By G. H. C. VAUGHAN, B.A. (Cantab.), *Barrister-at-Law*

One of the matters as to which differences of opinion are apt to arise between landlords and tenants is that of: who is to provide the new dustbin? The fact that rents are pegged by the Rent Acts at pre-war levels, whilst the cost of providing dustbins has substantially increased, has become a successful ground of appeal by landlords to courts of summary jurisdiction against orders served on them by local authorities under s. 75 (1) of the Public Health Act, 1936. A local authority, if it has undertaken the removal of house refuse, has power under s. 75 of the Public Health Act, 1936, to require either the owner or the occupier of the premises concerned to provide a dustbin of "suitable material, size and construction." The same section provides that "any person aggrieved" by the requirement may appeal within twenty-one days to a court of summary jurisdiction. The principal ground upon which such appeals are based is that it would have been more equitable for the owner instead of the occupier or *vice versa* to have been required to provide the dustbin. Thus in *Hale* v. *Croydon Corporation* (1945) E.G.D. 105, the house was let at a 1914-controlled rent of 12*s.* 7*d.* a week, but the corporation contended that, even though the tenant might be better able to pay for the dustbin, it was unreasonable to expect the corporation to inquire if that was so. The court held in favour of the landlord.

The same corporation was again unsuccessful in *Croydon Corporation* v. *Thomas* [1947] 1 All E.R. 239; 111 J.P. 157, where the King's Bench Division upheld a decision of Croydon magistrates to allow a landlord's appeal. An attempt was made in this case to argue that the decision whether the owner or the occupier should be served with the notice was a purely administrative decision for the corporation alone, and that the magistrates had no jurisdiction to entertain the appeal. The Lord Chief Justice, rejecting this argument, said: "We have, however, to read the section as it stands, and, as it stands, it is clear that it gives an unrestricted right of appeal. It provides that any person aggrieved by a requirement of a local authority may appeal to a court of summary jurisdiction. The principal way in which a person can be aggrieved is by being called on to provide this receptacle . . . one cannot imagine any greater grievance," and Humphreys, J., said: "There is no restriction of any sort to prevent the appeal court from considering this question: Was the requirement of the local authority a proper one in the circumstances?"

Another argument which did not find favour with Lord Goddard was that used in *First National Housing Trust, Ltd.* v. *Chesterfield Rural District Council* [1948] 2 All E.R. 658;

113 J.P. 413, to the effect that if the justices laid the obligation of providing a dustbin on the tenant's shoulders they would be contravening the Rent Restrictions Acts, inasmuch as the latter forbid the transferring to a tenant of any burden previously borne by his landlord. Lord Goddard pointed out that to contravene this provision the landlord would have to be under a contractual liability to supply the bin; if he was, and the local authority required the tenant to supply it, then the tenant would have an action in contract against the landlord for any expense to which he was put. If a person served with a notice under s. 75 of the Public Health Act, 1936, fails to comply with it, the local authority can supply the dustbin and recover the cost, and the defaulter may in addition be fined up to twenty shillings. It can be argued, looking to s. 290 (7) of the Act, that on the hearing of this claim the defaulter can still raise the defence that the owner or the occupier, as the case may be, should have been served with the notice, though the fact that he failed to lodge an appeal against the notice itself may prejudice the justices' view as to the merits of his case. *Lumley*, however, seems at p. 263 to take the view that the defence is not open.

Finally, it may be noted that in addition to the remedy by way of Case Stated to the High Court, an appeal also lies from the magistrates' court to quarter sessions. Such appeal takes the form of a complete new hearing.

TOWARDS CLEANER FOOD

Further information published while the article at 113 J.P.N. 787 was being printed confirmed what we there said upon the point of fact, that a large part of the mischiefs which are classified broadly under the head of food poisoning are "all along o' dirtiness, all along o' mess, all along o' doin' things rather more or less." The same story comes from factory canteens (see the chief inspector's report, *The Times*, December 21); from civic restaurants; and from the food trades. We find also, in everything we have seen published, confirmation for our own opinion on the point of policy, that registration of catering establishments with local authorities would of itself add nothing effective to the protection of the public. Milk sellers are already registered, but registration did not exclude the bandage from one bottle of milk, or from another the fly pupae, which led to the appearance in the Kensington magistrate's court of a Dairy Company. These intruders can hardly have been the company's fault or that of a responsible employee. Knowing no more of the case than we have just stated, we think malice as likely an explanation as any for the bandage, though the fly pupae must have sprung from carelessness at a low level in the staff. Fatter registers at the town hall would not have kept the mice from nesting in the pies at a firm of caterers, an even more widely published episode which was before the court some months earlier. Our article has led also to an interesting letter, p. 53 *ante*, from the medical officer of health of Cuckfield, whose remarks on an earlier occasion we had selected for welcome as a hopeful example of publicity on an important topic, and to communications from other readers, for which we are obliged, some of them forwarding information we shall use in returning to the subject now. The medical officer of health, at p. 53, supplies the clue to the difference between the figures we quoted as having been used by him, and those given in the House of Commons by another speaker. He challenges our suggestion that the widest spread of food poisoning is in the home, pointing out justly that a cauldron of curried filth in a restaurant kitchen will upset more stomachs than its equivalent in private life. Quite true; but our concern with private horrors was based on other grounds. In a public place the concentrated effects are more likely to force the giving of attention to what has gone wrong; the place is open to inspection by public officers, and the management are susceptible of punishment both by the courts and by their customers. Let fifty workmen be poisoned in a canteen or fifty company chairmen in Mayfair, and the newspapers will ensure that the whole world hears about it; the same people can, *privatim et seriatim*, be poisoned by their wives or their domestic staff, without becoming "news" or a general warning. Readers of the newspapers are becoming aware, at any rate in spasms, and on the off days for bombs and murders, that eating is a dangerous pastime, but whereas the reduction of its dangers in public places is largely a matter of public administration, and still more largely of commercial organization, an equivalent reduction in the home is a matter of education, which is far more involved and difficult. There is evidence that administration is being tightened. We referred in our former article to steps being taken by the metropolitan borough council of Kensington against others than the Dairy mentioned, *supra*, and the newspapers show the council of the city of Westminster are also showing activity. It does not appear why that council's sanitary staff did not take earlier steps, in the case of a restaurant in Bond Street, reported in the newspapers on November 29, when the owners pleaded guilty and fines amounting to £145 were imposed, since the conditions described by the prosecution (cobwebs in the refrigerator, rats, and general dirt) can hardly have come about in a quite short time, but we are less disposed to cavil at the fact that there had not (it seems) been adequate previous inspection than to express satisfaction at the beginning (if it is no more) of a campaign. We do not know how many restaurants there are in the city of Westminster; they must run into many hundreds, and we can well believe that it will take time to work round and inspect them all. A few prosecutions, with the imposition of salutary fines and publicity as in this case, should meantime do much to render inspection less necessary—though probably never unnecessary. Since this country is now, it seems, irretrievably committed upon ideological grounds against the principle of allowing a trade to expel its own black sheep, the finally effective remedy for such a state of things as was disclosed in the case of the restaurant lies in the public's hands; prosecution, with a full report of what the sanitary inspectors have found, will in a trade which depends ultimately on public approval do something to prevent similar conditions. But the public must give its support. More or less simultaneous with our article at 113 J.P.N. 787, was *The Times* notice of a film made for the Ministry of Health, entitled "Another Case of Poisoning." We have not seen the film, and the reviewer's description suggests an emetic quality, since it illustrates many insanitary practices in the home, the shop, and the refreshment house. The picture may have been over coloured, but it seems a pity that *The Times* of December 28, 1949, should end by saying: "The victim . . . lucky not to be the deceased . . . And to think it has all been going on for hundreds of years. Let us hope the 'food handlers' will take the film as seriously as we do, who now foreswear forever cream buns, pork pies, corned beef, draught beer, and meals both at restaurants and at home." Syphilis and slums and bribery have also been going on for hundreds of years, and the first and last, at any rate, have contributed a good deal to the gaiety of those not afflicted by them, but though ful persons nowadays know these evils are too serious to be damned with mere faint jocularity of the type we have just quoted. Many people who go shopping will

notice a variety of unwholesome practices, cats (of which more below) climbing where they should not; flies passing from the pavement to the pastry; and an infinite number of human petty commissions and omissions, such as counter-hands licking thumb or finger to separate the sheets of paper for wrapping foodstuffs—a very common and unsavoury practice, though possibly less dangerous than many others equally common. We have before us a note of an incident where a woman customer protested, perhaps bearing in mind Dr. Summerskill's exhortation to customers to do so, and, receiving a curt answer from the shop assistant, found all the other women in the queue expressing sympathy with the assistant, not with the protest. In the face of indifference or open, or even half concealed, hostility, it is hard for a private person to play a useful part. The Ministry of Food apparently agree that dirty ration books are one source of food contamination, and are willing to issue clean books without charge (*The Times*, December 9), but fresh contamination will as speedily occur unless much greater care is taken on both sides of the counter. In some of the bigger stores the cutting out of coupons is done by a separate staff, but in the ordinary shop this could not be arranged. The assistant who with dirty fingers doles out the weekly slice of bacon or fortnightly cube of butter must also handle the ration book, taken from among the unwashed potatoes and dog-defiled sprouts in the shopping basket, and replaced there after the coupons have been cut, with an added quota of surface fat to collect fresh dirt. The customer by covering the book, and the assistant by lifting bacon with a fork, instead of in the fingers, could each do something to discourage the myriads of germs launched on their foul career by the existing practices. At Hull the lord mayor says that he dislikes finding human hair in soup (the disadvantage of hair is, of course, that—unlike most foreign bodies which get into soup or other culinary preparations—it is insoluble), so the restaurant committee of the city council are proposing to require staff handling food at the corporation's restaurants to submit to examination of their hands and finger nails. This is the rule in some food factories, and it would be salutary if local authorities, who in pursuance of their new statutory powers have gone into the catering trade, were able to enforce better standards than are at present normal, on the part of waiters and waitresses and kitchen staff. If it is found that the council, and its managerial staff, can "get away with" inspection of the hands and finger nails of their employees who handle food, without serious labour trouble (such as experience shows is not improbable, if the resolution of the restaurant committee is enforced) then the practice may gradually spread to privately owned premises. But what seems to us more likely in most areas is that, after a local authority's committee has passed a resolution in this sense, the management, with whom its enforcement must rest, will let the instruction fall into abeyance for fear of strikes and similar disturbances. Concurrently with these instances of activity on the part of local authorities, *The Times* published information about activity of another sort. It seems that salmonellae causing food poisoning, which were known to be spread in the faeces of rats and mice, have now been found, with disquieting frequency, in the faeces of cats and dogs. There is little in this to cause alarm, since cats and dogs are, by comparison with rats and mice, controllable. Persons who handle the dog and then their food, without washing, have only themselves to thank if they find their food contaminated: another cause of contamination is the practice of allowing cats to climb on food or, in shops where food is sold, to sleep on the shelf where food will next day be displayed. This is very common, and the public passing outside the shop can only conjecture how thoroughly, if at all, the display shelves will be washed. Here again, there is no need to regard dogs and cats as particularly dangerous: the problem is only one of common sense—unfortunately, this is only one of a hundred ways in which consumers of food and its producers can show that both common sense and cleanliness are lacking. Among other contributions to our information which were brought forth by our former article was a note of an interesting paper read last September by the medical officer of health for Bethnal Green and Poplar, at the meeting in Geneva of the International Union of Local Authorities. This is as interesting as it is instructive, and emphasizes that, while there is no lack of knowledge on the scientific side, there is often great practical difficulty about the applying of what is known, both by local authorities and their officers, and by managements and supervising staff within the food trades. The weakness lies largely on the personal side: the medical officer's paper, like our own reflections, comes back to this point. Having regard to English methods of legislating it is not easy to cover matters that are, or may be, so very definitely the affair of the individual, his education, his background, training, culture, habits, and so on. Very largely it is a case of leading a horse to water but being unable to make him drink. Laws may require the provision and installation of a variety of sanitary and lavatory conveniences, but cannot compel their use, and those in charge cannot easily see if they are or have been used. The difficulty of compelling use of even a minimum of requirements is now grasped, and present attempts are in the direction of "cajoling" persons who keep and conduct places where the public eat into making some sort of provision and ensuring cleanliness of persons, etc., and laying down and endeavouring by indirect means to secure acceptance of rules regarding the use of appliances, cleaning materials and so on. Possibly as a result of the investigations now in hand under the aegis of the Ministries of Health and Food other ideas may be evolved. It is difficult to see, however, that much can be done additional to or apart from propaganda, publicity and education, even in regard to public places, and nothing, really, beyond these in regard to food consumed at home. In short—keep away from dirtiness, keep away from mess, don't get into doin' things rather more or less.

NEW COMMISSIONS

LEICESTER COUNTY

Mrs. Dorothy Atkins, Manor House, Burbage.
Mrs. Margaret Atkinson, Waltham.
Arthur William Dexter, Harris Bridge, Sibson, Nuneaton.
The Countess Ferrers, Staunton Harold.
Miss Mary Cicely Fosbrooke, The Hall, Ravenstone.
George Frederick Gilson, Burrough on the Hill.
Alfred Ernest Grimley, 139, Kings Road, Melton Mowbray.
George Alexander Hannah, Highfields, Osgathorpe.
Alan George Hilton, 26, Park Road, Birstall.
George Norman Hodson, O.B.E., The Hall, Wymeswold.
Wilfred Dilbhur Keene, Rodhill, Tilton on the Hill.
Mrs. Grace Eleanor Monica Lloyd, Stone House, Blaston.
Colonel Roger Shaw Manley, Twycross, Nuneaton.
Rowland Arthur Marriott, The Hall, Cotesbach.
Ernest William Parkinson, Greywalls, Cossington Road, Sileby.
John Henry Ross, Hambleton, Scraptoft Lane, Scraptoft.
John George Ernest Scott, Borrk House, Wilson.
Captain Arthur Sidwell, Sunnydene, Arnesby.
Percy Edward Timmins, Ashurst, 201, Blaby Road, Enderby.
Mrs. Gertrude Toon, 154, Forest Road, Coalville.
William Unsworth, Red House, Moira.
Kingsley Fox Veasey, Ashmead, Barkby Lane, Syston.
Harry Wileman, 24, Woodfield, Leicester Road, Measham.

PONTEFRACT BOROUGH

John Taylor Blackburn, F.R.C.S., Hawthornes, The Mount, Pontefract.
Mrs. Lydia Wright, The Barbican, Southgate, Pontefract.
Thomas Padgham Brindley, 33, Newgate, Pontefract.
Christopher Hudson, 5, Spring Gardens, Pontefract.
Richard Elisha Priestley, Claremont, Button Park, Pontefract.
John Shaw, The Beeches, 7, Mill Hill, Pontefract.

WEEKLY NOTES OF CASES

COURT OF CRIMINAL APPEAL

(Before Lord Goddard, C.J., Hilbery and Birkett, JJ.)

R. v. KELLY

March 7, 10, 11, 15, 1950

Criminal Law—Trial—Jury—Disqualification of juror—Conviction of non-capital felony—Juror's name in jurors' book—Juror sworn without challenge—Discovery of disqualification after conviction—"Attainted"—Juries Act, 1870 (33 *and* 34 *Vict., c.* 77), *s.* 10—*Juries Act*, 1922 (12 *and* 13 *Geo.* 5, *c.* 11), *s.* 2.

APPEAL against conviction.

The appellant was convicted at Liverpool Assizes before CASSELS, J., of murder and was sentenced to death. After the trial it came to light that five years previously one of the jurors had been convicted of receiving stolen property and sentenced to one month's imprisonment. The name of the juror in question had appeared in the jurors' book as that of a person qualified and liable to serve as a juror, and he had been duly summoned. His name had appeared on the panel of jurors, and he had been duly called, was not challenged, and was sworn.

By s. 10 of the Juries Act, 1870: "... no man who has been or shall be attainted of any treason or felony, or convicted of any crime that is infamous, unless he shall have obtained a free pardon, *nor any man who is under outlawry*, is or shall be qualified to serve on juries ..." [The words in italics were repealed by the Administration of Justice (Miscellaneous Provisions) Act, 1938, s. 12.]

It was contended on behalf of the appellant that the juror's conviction constituted such a disqualification that the trial was rendered a nullity.

Held, that the word "attainted" in the section referred to the result of a judgment following on conviction or judgment of outlawry in cases of treason or capital felony, and after the passing of the Forfeiture Act, 1870, no such thing as attainder was left in law except with regard to persons who were outlawed or already under the disability at the passing of the Act. The juror in question, though convicted of the non-capital felony of receiving, was, therefore, not "attainted" within the meaning of the section, and the appellant's contention failed.

Semble, that the obtaining of a free pardon referred to in the section meant the obtaining of an actual free pardon, and not the one implied, by endurance of the punishment imposed, under s. 3 of the Civil Rights of Convicts Act, 1828.

Semble, further, that s. 2 of the Juries Act, 1922, under which every person whose name is included in the jurors' book is liable to serve as a juror, would also have afforded an answer to the present objection, and that, on the authority of *R. v. Sutton* (1828), (8 B. and C. 417), where information with regard to the disqualification of a juror had only come to the knowledge of the accused person after conviction, the trial should be treated as a nullity only in cases where there had been either impersonation of a juror or mistake as to the identity of a juror.

Counsel: *Rose Heilbron, K.C.*, and *R. S. Trotter* for the appellant; *Gorman, K.C.*, and *Glynn Blackledge* for the Crown.

Solicitors: Registrar of Court of Criminal Appeal; Director of Public Prosecutions.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

MISCELLANEOUS INFORMATION

WORLD'S CITY TRAFFIC, 1948

Yet another publication has been prepared by the Traffic Section of the Danish Police, Copenhagen, on this occasion for the year 1948. A more up-to-date survey is difficult to produce because in the collection of material from the various countries some considerable time must elapse.

The brochure which is well furnished with coloured graphs and diagrams, deals with thirty-three cities that are the largest in the world, and of which none had a population of less than half a million.

It was the intention this year, as last, to tabulate figures which might form the basis of a general statistical survey of the causes of traffic accidents. Such a compilation, it was thought, would do much to assist in the diagnosis of the reasons for accidents in all the countries, "but it has become clear that methods of recording statistics vary so greatly that comparison is out of the question." However, summaries for certain cities have been included, namely Paris, Bombay, Los Angeles, Glasgow and Rotterdam.

Los Angeles is well to the fore in the number of vehicles in use, which number more than a million in all, or 517 per thousand population. The number of vehicles has risen by 250,000 during 1948. The largest total of bicycles is in Paris (750,000) but in proportion to population, Copenhagen leads with one cycle to every adult citizen. Horse drawn conveyances are most numerous in Melbourne, Calcutta and Cairo. Pittsburg, Cairo, Zurich, and Copenhagen hold the record, in that order, for the highest number of tramcars per inhabitant, whilst Melbourne, Sheffield and Birmingham have the biggest proportion of buses. Manchester, Montreal and Paris have the greatest proportion of taxicabs.

Fatalities through traffic accidents are most numerous in London, but considering population Johannesburg leads with 180 deaths; 22.50 per hundred thousand inhabitants. Next comes Melbourne with 18.21 and then Sydney with 17.60 per hundred thousand inhabitants. Glasgow, Liverpool, and Melbourne record the relatively highest totals of children killed in traffic accidents. In proportion to the number of drivers, Bombay, Cairo and Johannesburg, show the highest number of people killed.

In cities in the United States far more traffic incidents are made the subjects of police reports than elsewhere. During 1948 Los Angeles police reported on almost one million, that is, equal to one report for every two citizens. Glasgow comes last in this respect with 3,451 reports, or 3.11 per thousand inhabitants.

Records showing arrests of intoxicated drivers fluctuate widely. The reason appears to be due to the differing regulations throughout the world. Countries with stringent traffic regulation laws will automatically show high figures. Copenhagen, Oslo and Rotterdam are prominent with 1,558, 1,226 and 1,176 per thousand inhabitants respectively. The towns with the lowest number of arrests of intoxicated drivers are Manchester, Sheffield, and Birmingham. "It is therefore hoped," comments the preface, "that the low figures recorded in these towns are an indication of praiseworthy sobriety amongst their motorists!"

Regulations governing road priorty have been collected and the treatment of this subject shows much interesting data. There are literally no two countries alike, as regards these regulations or the manner of interpretation. Even in countries with a common border, and which may be considered closely akin to one another, there are great dissimilarities. On the other hand it occasionally occurs that states which lie on opposite sides of the world have laws which roughly coincide, for example Denmark and India have reached the same conclusions. "In the light of the material assembled," continues the brochure, "one is tempted to agitate for steps to be taken towards international co-operation in reaching some kind of agreement as to the wording of those regulations which are of the greatest importance to traffic safety."

The main principles with regard to road priority in the various countries appear as follows: (1) driving on the right, giving way to traffic from the right; (2) driving on the left, giving way to traffic from the left; (3) driving on the left, giving way to traffic from the right; (4) driving on the left, no general rule as to road priority; (5) driving on the right giving way to traffic from the right if the two vehicles are equi-distant from the road junction; if this is not the case the driver nearest the crossing has the right of way; (6) driving on the right, giving way to traffic from the right and to drivers turning in the intersection even when these are making a turn to the left.

Each of these principles is, in the countries concerned, normally though most variously supplemented by one or more of the following: (7) driver's on roads or streets of minor traffic importance must exercise special caution when entering a major thoroughfare; the usual road priority regulations still apply, though no signs are erected; (8) drivers on roads or streets of minor traffic importance, must exercise especial caution when entering a road or street of greater importance and must yield right of way to traffic approaching from either side; signs are erected to enforce the rule; (9) drivers on roads or streets of lesser importance must exercise caution when entering a thoroughfare of major importance and must yield right of way to traffic approaching from either side; no signs are erected to help enforce the rule; (10) drivers must stop before entering a road or street of major importance, from a side-street or by-way, signs

erected ; (11) drivers must stop before entering a major thoroughfare as in No. 10, but no signs are erected.

Australia : In Melbourne and Sydney the rule is that vehicles must be driven on the left side of the road, but right of way is given to traffic approaching from the right. Otherwise apparently the two towns do not enforce quite the same regulations. In Melbourne there are certain thoroughfares on which traffic has road priority. Streets used by tramcars, and so designated, are "major streets." But words travelling on these drivers must not cross a minor roadway at a speed greater than 25 m.p.h. When travelling on a minor street, vehicles must not cross or enter another minor street at a speed at which they cannot stop immediately. The major and minor rule does not apply in Sydney, but drivers are required to observe "Halt" or "Slow" signs which are erected at important intersections. Where a "Slow" sign is displayed the driver must not exceed fifteen miles an hour.

Austria : In Vienna traffic is on the right and must generally give way to traffic coming from the right. In addition there are the so-called "Vorrangstrassen" upon which drivers have road priority ; all such streets will eventually be indicated by signs.

Belgium : Vehicles in Brussels must be driven on the right and give way to traffic approaching from the right. Drivers on minor roads or roads entering major streets or roads must give way to traffic approaching from either side ; this is not indicated by means of signs, but all important highways are marked by red-topped milestones.

Canada : Traffic is on the right and must give way to vehicles coming from the right, except when a stop signal is displayed on one of the roads, in which case the driver on that thoroughfare yields right of way.

Denmark : Drivers must use the right of the road and give way to traffic from the right. A supplementation of this rule requires drivers on minor roads to drive at a speed permitting them to stop when entering the road crossing in front of them. In addition vehicles entering major thoroughfares must give way to approaching traffic. These roads are indicated by signs.

France : Vehicles in Paris keep to the right giving way to vehicles coming from the right. There are no special regulations about major or minor roads, except in country districts where certain roads are marked as highways, and the traffic has right of way.

Holland : In Amsterdam and Rotterdam the rule of the right of the road applies. Some thoroughfares are designated highways, drivers approaching from side roads must give way to oncoming traffic from the right or left.

Norway : Vehicles keep to the right in Oslo, giving way to traffic from the right, but drivers on lesser roads must drive at a speed permitting them to stop upon entering road crossings ahead. Traffic entering major roads must give way to all on-coming vehicles. These roads are signed.

South Africa : In Johannesburg, vehicles move on the left of the road. None may enter a public road from any other thoroughfare until certain he may do so with safety. Some roads are known as "Through Streets," all side streets entering these are called "Stop Streets." Signs are erected with the word "Stop" and "Stop" is painted on the road surface.

Sweden : In Stockholm vehicles are driven on the left, giving way to traffic on the left. Traffic on lesser thoroughfares must be able to stop when about to enter the street or road crossing ahead, and those travelling from minor to major roads must give way to on-coming traffic. These roads are indicated by signs.

Switzerland : Vehicles in Zurich use the right of the road. The rule, as previously mentioned, in regard to major and minor roads applies.

Uruguay : In Montevideo and the Republic generally traffic must keep to the right, but otherwise the rules governing road priority on the high roads are not the same as those in Montevideo. Drivers in the city must keep to the right and give way to traffic coming from the left ; drivers on ordinary high roads must keep to the right and give way to traffic approaching from the right. In Montevideo are a number of very busy streets on which drivers have a special right of way. The approaches to these streets are signed "Halt—right of way." Some of the more important high roads are designated major roads and traffic entering them must give right of way to vehicles approaching from either direction. It seems these junctions are not signed.

U.S.A. : Traffic moves on the right, but not all the States have the same regulations. For example in Boston, the first driver to enter an intersection has the right of way, even if an approaching vehicle comes from the right. When two vehicles enter an intersection at the same time, the driver on the left shall yield right of way.

In Cleveland drivers are obliged to give right of way to traffic from the right at uncontrolled crossings. All crossings on major streets are controlled by a "Stop" sign or an electric traffic signal.

Detroit : If two vehicles enter an intersection at approximately the same time, the driver on the left shall yield the right of way, except as otherwise provided. Local authorities may designate thoroughfares or highways. Vehicles must stop before entering them. Stop signs are erected at these points. Where two or more highways intersect the authorities are to determine which traffic shall be given preference.

Los Angeles : Drivers approaching a crossing shall yield right of way to a vehicle which has entered the intersection from another highway. When two vehicles enter an intersection from different sides, the driver of the vehicle on the left shall yield to the vehicle on the right. Drivers shall stop at the entrance to a through highway and yield to other traffic which has entered the intersection from the through highway, or which is approaching so closely on the through highway as to constitute an immediate hazard. These drivers having so yielded may proceed and the drivers of all other traffic approaching the intersection on the through highway shall yield them right of way.

Milwaukee : When two vehicles enter an intersection simultaneously the one on the right has the right of way. A vehicle approaching, but not having entered an intersection shall yield to one within the intersection or turning therein to the left across the line of travel of the first vehicle ; providing the driver turning left has correctly signalled his intention to turn. The driver of a vehicle within an intersection may turn left across the path of a vehicle approaching from the opposite direction; he must, however, give the approaching driver a reasonable opportunity of avoiding collision.

Philadelphia : If two cars enter an intersection, or approach each other, the driver on the right has the right of way. Right of way must be yielded to the vehicle that has entered an intersection or is about to turn left, after having given the correct signal, across one's own line of travel. Drivers entering an intersection on a "Through Highway" must yield to traffic approaching from both sides of that highway ; this does not relieve drivers on the highway of the obligation to give reasonable opportunity to traffic on side roads to filter in. All traffic must stop at "Through Highways" and "Stop Intersections" ; these are indicated by signs.

Pittsburg : When two vehicles approach an uncontrolled crossing at the same time the driver on the right has right of way. A number of streets are for "Through Traffic" and approaching side street vehicles are halted by a sign "Stop—Through Traffic." All side street traffic is controlled either by a sign as already indicated or by electric traffic signals. Otherwise streets are of minor importance and right of way is with the vehicle coming from the right.

San Francisco : Drivers approaching an intersection must yield to vehicles which have entered the intersection from another side. Vehicles entering an intersection from different sides at the same time, the driver on the left must yield to the other. This rule, however, does not apply to vehicles approaching each other, when one intends to make a left turn or is actually doing so. The driver within an intersection who intends to turn left must yield to any traffic approaching from the opposite direction, if, within the intersection, or so close as to constitute an immediate hazard. When such driver has yielded and given the regulation signal, he may proceed to make the left turn, and drivers of all other vehicles approaching from the opposite direction must accord him the right of way.

Fatalities during 1948 involving children and adults for London were 113 and 490 respectively ; New York 82 and 494 ; Calcutta 29 and 82 ; Bombay 60 and 159 ; Los Angeles 32 and 257 ; Philadelphia 33 and 165 ; Detroit 31 and 185 ; Vienna 27 and 211 ; Montreal 21 and 99 ; Melbourne 38 and 186 ; Glasgow 37 and 60 ; Birmingham 21 and 66 ; Baltimore 14 and 63 ; Cleveland 8 and 88 ; Milwaukee 3 and 42 ; San Francisco 6 and 87 ; Amsterdam 18 and 52 ; Johannesburg 19 and 161 ; Liverpool 26 and 46 ; Copenhagen 8 and 52 ; Stockholm 9 and 59 ; Manchester 21 and 60 ; Pittsburg 13 and 71 ; Rotterdam 19 and 27 ; Sheffield 13 and 25 ; Oslo 7 and 17 and Zurich 5 and 30. The figures for Paris, Buenos Aires, Sydney, Brussels and Montevideo are not available. The total of injured persons for the same year in the towns enumerated was 227,981.

Dealing with the problem of intoxicated drivers the figures for 1948 are London 390, New York 208, Paris 267, Bombay 35, Sydney 1,789, Los Angeles 4,219, Philadelphia 500, Detroit 1,080, Vienna 338, Montreal 127, Melbourne 506, Glasgow 134, Birmingham 53, Baltimore 241, Cleveland 707, Milwaukee 797, San Francisco 1,600, Amsterdam 216, Johannesburg 600, Liverpool 23, Copenhagen 478, Stockholm 446, Manchester 23, Pittsburg 228, Rotterdam 199, Sheffield 17, Oslo 315. The statistics for Calcutta, Buenos Aires, Cairo, Brussels, Montevideo and Zurich are not included.

A tabulated list of causes of accidents indicates that the reasons are common to all lands *i.e.* excessive speeds, failing to give signals, intoxication, hazardous overtaking, faults of pedestrians, mechanical defects of motor vehicles and numerous others that are well known to us in this country.

THE WEEK IN PARLIAMENT

By Our Parliamentary Correspondent

The Lord Chancellor made it quite clear, during the House of Lords debate on crimes of violence, that the Government has no intention whatever of reintroducing flogging.

But that did not mean that they were not prepared to cope with the situation, he went on. The old experiment whereby His Majesty's Judges used often to give a shorter sentence, with a sentence of corporal punishment added to it, was now impossible. They could not now give corporal punishment. It followed that the shorter sentence was no longer appropriate and that longer sentences had to be given.

Referring to the Cadogan Committee, which had in 1938 unanimously recommended the abolition of corporal punishment, the Lord Chancellor said that the average number of persons sentenced to corporal punishment for the thirty-five years up to 1935 was about thirteen a year. The case histories in the Appendix III to that report showed that the subsequent careers of those who were flogged were rather worse than the subsequent careers of those who were not flogged.

Some newspapers had put the question as "Cat or Cosh." He could not imagine a more misleading way of putting the controversy, because there was no evidence to show that the use of the "cat" prevented further crimes of violence.

Lord Lloyd, who initiated the debate, said he felt that the Government were very rash to select the year 1948—a year when the police force was 12,000 men below strength, and when the number of cases of robbery with violence was the highest for fifty years—to abandon corporal punishment.

Nobody could be enthusiastic about the imposition of corporal punishment. At the best, it should be a reserve power to strengthen the hands of the Judiciary in certain cases. And so far as he was concerned, the less it was necessary to use it, the better. Nevertheless, the Judges and the magistrates, in their great experience, could surely be trusted to use such a power with wisdom, and he thought that that power ought to be there.

He suggested that the Government should reconsider the whole matter and should sanction the use of the birch in certain cases. He pointed out that in doing so, they would in no way prejudice their right to try the experiment of abolition again at a later date, when circumstances were more propitious.

Viscount Templewood said it was his convinced opinion that corporal punishment was not an essential deterrent for suppressing the outbursts of violent crime that were making us all so anxious. He believed that long terms of imprisonment and training were a much better deterrent. Put at their lowest they kept the violent criminal segregated for a length of time; put at their highest they allowed young offenders to be given a long period of intensive training which would eventually reform them.

He believed that judicial corporal punishment was ineffective. At the magistrates' courts it had been abandoned not because the magistrates thought it was wicked or immoral but because they thought it was of little use and that it often did much harm. It was a significant fact that although it was in 1948 that the provision authorizing whipping as a sentence in magistrates' courts was repealed, whipping sentences in magistrates' courts had practically become obsolete before that date. Magistrates, as a whole, had abandoned corporal punishment because they had found it useless for their purpose.

He wanted a much greater concentration on the problems of training, the improvement of our probation system, and, perhaps, the introduction of necessary reforms into borstal institutions and approved schools.

Lord Oaksey said it was not so much that there had been more cases of robbery with violence but that those cases had been accompanied by far greater ferocious violence than they were in the past. He had no hope that the mere imposition of a long sentence would stamp out that menace. Long sentences, when the prisons were so full that it was unavoidable that two or three men had to be put into a cell which was intended for one, provided a situation which must be a nightmare to many people, though possibly a source of social enjoyment to others. He could not but think that long sentences for robbery with violence, imposed upon young men, were not the most appropriate remedy.

Viscount Simon said that if these crimes of violence were due, as had been suggested, to the fact that there were still so many deserters floating about in our population he would urge that the Government should reconsider the question of an amnesty.

Lord Goddard said he did not yet feel able to ask for a return of corporal punishment, because he did not think it was a good thing for the criminal law of the country to be "up and down." But he believed that if the wave of violent crime went on and could not be stopped, the demand for an attempt to stop it by corporal punishment would be overwhelming. Then it would have to be applied, and he hoped to goodness that it would not be applied too late.

Lord Schuster believed that if they had abandoned corporal punishment for adults and maintained it for the young they would have retained something really most valuable and would have lost nothing. It was only by dealing with the young at the proper time that they could ever stop the crime wave.

Winding up the debate, the Lord Chancellor said that he did not believe there was anything intrinsically wrong or immoral in using corporal punishment. If he were satisfied that corporal punishment would prevent those crimes he would be in favour of it. But so far as he could see corporal punishment had not proved an effective deterrent.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, March 21

MAINTENANCE ORDERS BILL, read 1a.

MIDWIVES (AMENDMENT) BILL, read 2a.

Wednesday, March 22

MEDICAL BILL, read 1a.

HOUSE OF COMMONS

Wednesday, March 22

DISTRIBUTION OF INDUSTRY BILL, read 1a.

PERSONALIA

APPOINTMENTS

Mr. A. R. C. Kirilan has been appointed by the Lord Chancellor an assistant registrar of county courts. He will be attached to the Birmingham county court.

Mr. P. J. Chellew, clerk to the St. Ives borough justices and coroner for the western division of the county of Cornwall, has been appointed clerk to the justices for the petty sessional division of West Penwith in succession to Mr. C. E. Venning.

Mr. J. R. Lloyd, M.A., assistant solicitor to the borough of Bridlington, has been appointed deputy town clerk to the same borough. During the war Mr. Lloyd served in the Royal Artillery, attaining the rank of captain. He was articled to Mr. R. A. Lloyd of Messrs. Mawdsley and Hadfield of Southport and was admitted in 1949. He has been assistant solicitor to Bridlington since April, 1949. Mr. Lloyd takes the place of Mr. Jack Smith, LL.B., who has been appointed town clerk of Dunstable.

OBITUARY

We regret to record the death, in London recently, of Sir Joshua Scholefield, a former editor of the *Justice of the Peace and Local Government Review*. In both his legal and public work Sir Joshua enjoyed a wide and distinguished career. Admitted as a solicitor in 1887, he practised in Yorkshire until he later transferred his activities to the other branch of the legal profession, being called in 1900 to the Bar by the Middle Temple—of which, in 1945, he was to become Treasurer. Practising on the north-eastern circuit, he took silk in 1922, and in 1929 was appointed recorder of Middlesbrough, an office he held until 1947. He edited the *Encyclopaedia of Local Government Law*, the sixth edition of *Michael and Wills' Gas and Water*, and was joint editor of *Appeals from Justices of the Peace; Private Street Works Act*, 1892; of the seventh to eleventh editions of *Lumley's Public Health*, and was joint and later senior editor of this journal for some years prior to the first World War. In 1918, he stood as Coalition candidate for Hemsworth, and in 1922 as Conservative candidate for Pontefract; in 1930 he was appointed chairman of the Railway Assessment Authority—an appointment he retained until the Authority was wound up in 1948, following the nationalization of the railways. From 1933 to 1936 he was president of the Passenger Transport Arbitration Tribunal, and from 1929 had been a Bencher of the Middle Temple. He was a member of His Majesty's Commission of the Peace for Surrey, and was knighted in 1937.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 23.

SHIPPING—SUBMERGED LOAD LINE

The master of a coasting vessel appeared recently at Liverpool City Magistrates' Court, charged with an infringement of s. 44 of the Merchant Shipping (Safety and Load Line Conventions) Act, 1932. The charge alleged that, on a stated date, the defendant was master of a vessel being a British load line ship registered in the United Kingdom, which was then so loaded as to submerge in salt water, when the ship had no list, the appropriate load line on each side of the ship, that is to say, the load line indicating or purporting to indicate the maximum depth to which the ship was for the time being entitled under the Load Line Rules to be loaded.

For the prosecution, it was stated that the ship was seen at Maryport (Cumberland) to be battened down ready for sailing to Coleraine, Ireland, with coal, when Ministry of Transport officials found she was so overloaded as to be five inches too deep in the water.

It was stated on behalf of the defendant, who pleaded guilty, that he was ashore while stevedores were loading the ship and when he returned the hatch covers were on. The mate had supervised the loading and it appeared that an error had been made. The justices imposed a fine of £30.

COMMENT

It will be recalled that this Act gives effect to an International Convention for the safety of life at sea which was signed in May, 1929, and to an International Load Line Convention which was signed in July, 1930.

The Act, which is to be construed as one with the Merchant Shipping Acts, 1894 to 1928, contains stringent provisions to safeguard life at sea.

Section 44 under which this prosecution was brought provides, in subs. 2, for a maximum penalty of £100 on the owner or master of a vessel, and to such additional fine as the court thinks fit to impose having regard to the extent to which the earning capacity of the ship was, or would have been, increased by reason of the submersion.

Subsection 3 of the section provides that such additional fine shall not exceed £100 for every inch, or fraction of an inch, by which the appropriate load line on each side of the ship was submerged, and subs. 5 provides, that without prejudice to any proceedings under the foregoing provisions of this section, any ship which is loaded in contravention of this section may be detained until she ceases to be so loaded.

(The writer is indebted to Mr. H. A. G. Langton, M.B.E., Clerk to Liverpool City Justices, for information in regard to this case.) R.L.H.

No. 24.

A CORRUPT OFFICIAL

A publicity officer employed in a seaside resort appeared on January 18, 1950, before the Alford justices to answer fourteen charges each alleging that he had corruptly accepted a gift as a reward for having done an act in relation to his principal's affairs, in contravention of s. 1 of the Prevention of Corruption Act, 1906.

The prosecution, which was undertaken by the Director of Public Prosecutions, suggested that the case was one which was suitable for summary trial and the defendant consented to summary trial.

For the prosecution, it was stated that the defendant was given authority by his local council to employ a concert party for a certain period during the summer season at a cost which was not to exceed £120 a week.

The defendant entered into an arrangement with an artist to provide a concert party at £110 a week but the defendant reported to the council that the figure was £120 a week, and a contract was duly entered into between the council and the artist at the figure of £120 a week.

The prosecution further alleged that the artist paid the sum of £10 each week to the defendant.

The defendant pleaded not guilty, and denied that the whole of the sum alleged to have been paid to him had in fact been paid and stated that those payments which had in fact been made were in repayment of a loan made by him to the artist.

The justices found all fourteen charges duly proved and the defendant was discharged conditionally under s. 7 of the Criminal Justice Act, 1948.

COMMENT

It is understood that the defendant had a wife and children dependent upon him and that as a result of the offence being detected he had lost his job and was penniless, and it may well have been that the justices felt that any punishment in the form of imprisonment that they might impose would bear more hardly on the defendant's family than on the defendant himself; nevertheless it is noteworthy that the court felt able to take so merciful a view of the case.

It is always difficult to bring home charges of this nature, and it is customary, when they are discovered, to dispense stern punishment to the guilty party.

The gravity with which the legislature regards offences of this nature may be gauged by the fact that on conviction on indictment there may be imposed two years' imprisonment and a fine of £500, and on summary conviction four months' imprisonment and a fine of £50.

(The writer is indebted to Mr. J. R. Tinn, Clerk to the Alford Justices, for information in regard to this case.) R.L.H.

No. 25.

A RUDE BUS CONDUCTOR

A bus conductor appeared before the Oxford City Magistrates recently, charged with failing to behave in a civil and orderly manner when acting as a conductor on a public service vehicle contrary to reg. 4 (a) of the Public Service Vehicles (Conduct of Drivers, Conductors and Passengers) Regulations, 1936.

For the prosecution, evidence was given that a woman carrying a child got on the bus just as it started to move. The conductor said to her: "Don't you ever get on my bus again like that." The conductor repeated this remark several times in a most aggressive tone, and finally another passenger on the bus told him to stop bullying. The conductor then told the man who had intervened to get off the bus, and when he was about to alight the conductor rang the bell so that he was forced to jump off as the bus gathered speed.

In cross-examination, the prosecution witness stated that the trouble was caused because the conductor did not look round before he rang the bell to start the bus, and the bus started before the woman was properly on the bus.

Another passenger gave corroborative evidence, and the conductor, who pleaded not guilty, admitted in his evidence that he told the woman it was a silly thing to do and that she must never do it again, and said that when a man in the bus started to interfere, he told him it was none of his business.

The bench decided to convict, and the conductor was fined £1 and was ordered to pay 10s. costs.

COMMENT

It is a pity that these regulations are not more widely invoked, as there are many conductors whose manners might well improve if they knew that incivility to their passengers was likely to bring them to court.

The regulations, which were made by the Minister by virtue of s. 85 of the Road Traffic Act, 1930, provide, *inter alia*, that drivers or conductors when acting as such, shall behave in a civil and orderly manner, and shall take all reasonable precautions to ensure the safety of passengers in or on or entering or alighting from the vehicle. It cannot be denied that, since the war, there has been, at any rate in the London area, a marked diminution of care on the part of some conductors for the welfare of elderly people entering buses.

Section 85 (2) of the Act of 1930 provides for a maximum fine of £5.

(The writer is indebted to Mr. F. J. A. Walsh, Clerk to the Oxford City Justices, for information in regard to this case.) R.L.H.

PENALTIES

Lambeth Magistrates' Court—January, 1950—when not a solicitor drawing a lease for reward—fined £15. To pay £2 2s. costs.

Oxford—March, 1950—allowing three horses and a donkey to stray—fined £1. Defendant stated to have had about forty previous convictions for similar offences.

Lytham—February, 1950—unlawfully accepting petrol coupons (four charges)—fined a total of £20. To pay £9 13s. costs. Coupons for 8,500 gallons of petrol had disappeared through St. Annes Post Office. Nine of the missing coupons were found in the defendant's notebook and two more in his teapot. Defendant was an ex-St. Annes postman.

West Bromwich—February, 1950—attempting to leave a bus without paying the fare—fined £1. Defendant a bricklayer's labourer.

Brierley Hill—February, 1950—(1) assaulting a police officer, (2) drunk and disorderly—(1) two months' imprisonment, (2) one month's imprisonment. The sentences to run concurrently. Defendant, a man of twenty-two, was found lying in a doorway; when aroused by a policeman he became abusive and used obscene language and kicked the policeman on the shin.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Administration of Estates—*Purchase by personal representative.*

A by her will leaves her estate upon trust for sale and gives the net residue equally between her seven named children with the usual clause substituting grandchildren for such of the said named children as should predecease her. A died leaving six of the named children surviving and a grandchild, the child of the other named child who predeceased A. The six surviving children have agreed that one of the freehold properties be sold to one of the beneficiaries (who is one of the executors) and are willing to join in the conveyance to him. The grandchild is not *sui juris*. Can the purchasing executor rely on s. 26 (2) of the Law of Property Act, 1925, or should he obtain the court's sanction to the proposed sale? A. NEMO.

Answer.

The court's sanction is essential: *Re Harvey, Harvey* v. *Lambert* (1888) 58 L.T. 449, and other cases noted therewith at 24 Dig. 567. As Kekewich, J., there said, the rule is absolute.

2.—Criminal Law—*Public Order Act, 1936—Whether confined to meetings and processions.*

I interpret s. 5 of the Public Order Act, 1936, as covering disorderly conduct by ruffians in a public place on any occasion and not necessarily at a public meeting or procession. Is this interpretation correct or does the *ejusdem generis* rule apply so as to make the disorderly conduct dependent upon a public meeting or procession? APOA.

Answer.

We agree that s. 5 of the Act is not confined to a public meeting, and it says nothing about processions. The offence created can be committed "in any public place" as defined in the Act. But in view of the terms of the query we feel bound to point out that the person committing the offence need not be disorderly, nor need he be a ruffian. A rector who allows a fête in the glebe meadow and "threatens" to have a disorderly ruffian removed, so that a breach of the peace by the disorderly ruffian is "likely to be occasioned" can be charged under the section. In other words, Parliament has not been content to penalize the use of abusive or insulting words with intent to provoke a breach of the peace.

3.—Criminal Justice Act, 1948—*Probation and conditional discharge—Whether fine can also be imposed under s. 13.*

I would be glad to have your advice concerning the effect of s. 13 of the Criminal Justice Act, 1948, on s. 3 (1) and s. 7, of that Act.

Can a person be placed on probation and fined, for one offence, in view of the words "instead of sentencing him." A fine may be a sentence.

Similarly, can a person be conditionally discharged and fined, for one offence, in view of the words "that it is inexpedient to inflict punishment." A fine may be punishment. SOP.

Answer.

The words of s. 13 are wide enough, literally, to include such orders in addition to a fine, but we cannot believe this to be the true interpretation, and in the absence of authority we should answer both questions in the negative.

If a probation order may be made "instead of sentencing" a defendant, it seems incompatible to proceed to sentence him to pay a fine. Equally, since an order of conditional discharge can be made where it is thought inexpedient to inflict punishment, it seems incompatible to proceed to punish by a fine.

Further, such a procedure might be criticized on the ground that it would render a person liable to punishment twice, at different times, for the same offence.

4.—Food and Drugs—*Time limit for proceedings under s. 83 (1) of 1938 Act.*

Under s. 80 of the Food and Drugs Act, 1938, a prosecution under the Act cannot be commenced after the expiration of twenty-eight days from the date when the sample in respect of which the offence is committed was procured. A issued a summons against B for selling an article of food which was not of the quality of the food demanded by the purchaser under s. 3 of the Act. The summons is issued and served within twenty-eight days of the sample being taken. The hearing of the summons is adjourned at the request of B, and six weeks after the sample is taken B applies for, and issues, a summons against C under s. 83 of the Act, alleging that the contravention was due to the act or default of C. The hearing of the summons is further adjourned and ten weeks after the sample was taken, C applied for a summons under s. 83 of the Act against D, alleging that the contravention was due to the act or default of D.

Is there any limit to the time in which the summonses under s. 83 of the Act can be issued, or should all of the summonses under s. 83 have been issued before the expiration of twenty-eight days from the taking of the original sample?

Please quote any authorities on the subject. SEAD.

Answer.

In our opinion the twenty-eight days limit does not apply. If the information is duly laid "not less, I think, than three clear days before the summons is heard," *per* Lord Goddard, C.J., in *Malcolm* v. *Cheek* [1947] 2 All E.R. 881; 112 J.P. 94, that appears to be sufficient.

See also observations of Lord Caldecote, C.J., in *Herman Jennings and Co., Ltd.* v. *Slatcher* [1942] 2 All E.R. 1.

We do not consider that the laying of the information by the defendant against another person is the beginning of a prosecution, but rather a further step in proceedings already begun.

5.—Housing—*Unfitness for human habitation—Reasonable expense.*

Is there any case in which the definition of the phrase "unfit for human habitation and is not capable at a reasonable expense of being rendered so fit" as given in s. 11 (1) of the Housing Act, 1936, is considered? It is appreciated that in determining this question regard must be had to the factors mentioned in s. 188 (4) of the Housing Act, 1936, but we feel it is probable that the meaning and interpretation of this phrase has been judicially examined. Please let us know the reference of any relevant cases. AHA.

Answer.

The judgments in *Johnson* v. *Leicester Corporation* (1934) 98 J.P. 165; *Stidworthy* v. *Brixham U.D.C.* (1925) 2 L.J.C.C.R. 41; *Coleman* v. *Dorchester R.D.C., ibid.* 113, may be useful. *See* also the very recent decision in *Bacon* v. *Grimsby Corporation* (1949) 113 J.P. 539, upon s. 9 of the Act, where an earlier case was examined and the section was analyzed by the Court of Appeal.

6.—Landlord and Tenant—*Furnished Houses (Rent Control) Act, 1946—Lessee giving services and supplying food as well as paying rent—Jurisdiction.*

A is left a widower and in order to assist him in running his household accepts B and his wife as tenants of a furnished room in his house for their exclusive use, with a right to share the living accommodation of one other room and a scullery. The rent payable for such room and accommodation was agreed at £1 per week. B's wife performs all the household duties such as cleaning, shopping, and the preparation of meals and the upkeep of A's private rooms. B also pays the cost of all unrationed foodstuffs consumed in the house by A, B, and his wife. A pays for the whole of the electricity, gas, and fuel, which is for the benefit of the whole house. B considers that, whilst the actual rent of £1 per week charged for rent is not unreasonable, yet that, when this is coupled with the personal services of his wife and the cost of provisions, he is paying too much for the accommodation he and his wife receive. He proposes to refer the matter to the local rent tribunal. If he does so can the tribunal, when considering the rent of room and accommodation, fix that rent at such a figure that the rent plus the tenant's services will equal the actual value of the room and accommodation without the services? ALW.

Answer.

This is the strangest jumble we can remember, and we do not see how the tribunal can hope to do more than very rough justice. But their power is to approve the rent or reduce it to such sum as they may, in all the circumstances, think reasonable (or they may dismiss the reference). We cannot say that services or food supplied by the lessee are not among the "circumstances."

7.—Magistrates—*Practice and procedure—Enforcement of penalties for continuing offence.*

The defendant B.E. was prosecuted on a complaint of being an owner of a certain building which in accordance with the provisions of the Public Health Act, 1936, he had been requested by the said council the local authority to remove before the expiration of twenty-eight days from February 18, 1949, unlawfully after the expiration of the said period of twenty-eight days did fail to remove the said

building contrary to s. 53 (5), Public Health Act, 1936. The court found the defendant guilty and the following order was made "Fined five pounds and ten shillings a day after a period of three calendar months, if the building is not then removed."

The court, as you will see, allowed the defendant a period of three months to remove the building before imposing a continuing fine of ten shillings per day. I have now been informed by the council that in their view the building has not been removed and accordingly the council wish that appropriate steps should be taken to recover the continuing fine of ten shillings per day. I wrote to the solicitors who appeared on behalf of the defendant that as the building which was subject to the order had not been removed the defendant is liable to a fine of ten shillings a day as from September 28, 1949, and unless a remittance was received for the amount due appropriate steps would have to be taken for the recovery thereof. The defendant's solicitors replied that the building which was subject to the order had been removed and that therefore there was no failure on the defendant's part to comply with terms of the order. The council have been informed of the contents of the letter of the defendant's solicitors and still maintain that the order has not been complied with, and wish steps to be taken to enforce payment of the daily fine. It is evident that the question whether or not the building has been removed in accordance with the order is a matter to be determined by the court which made the order, but I am not clear as to what procedure to take to bring the matter before the court. It seems to me that a summons under s. 11 of the Money Payments (Justices Procedure) Act, 1935, would not be appropriate in this case, as such summons is only to ensure the attendance of the defendant so as inquiry could be made by the court as to his means. It seems to me that a complaint should be made by someone on behalf of the council that the order has not been complied with.

I shall be very grateful to you for your advice and guidance as to how to proceed in this matter. SAX.

Answer.

Even if it is lawful to impose penalties, for a continuing offence, in respect of future days (and the cases cited on p. 64 of *Stone*, 1949, certainly cast doubt upon this) it is true as our correspondent states, that it will be for the court to determine the facts, as to compliance with the removal notice. It would also be for the court to ascertain the number of days, if any, in respect of which penalties have been incurred.

It seems to us that the right course to take is to issue a fresh summons for non-compliance on and after September 28. The justices can then hear both sides and determine the questions in issue. The £5 penalty can of course be enforced in the ordinary way. It is the question of penalties incurred after that conviction that requires a further hearing. A summons under s. 11 of the Money Payments Act, 1935, or the issue of a distress warrant, is the next step to enforce the £5 fine.

8.—Parish Meeting *Poll—Placards, etc.—Name of printer, etc.*

At a recent parish meeting for the parish of X a poll was demanded on the question arising at that meeting as provided by para. 5 of part VI of sch. 3 to the Local Government Act, 1933. Sub-paragraph (5) of para. 5 provides that the poll shall be taken by ballot in accordance with rules made under s. 54 of the Local Government Act, 1933, and the provisions of that section shall, subject to any adaptations made by those rules, apply in the case of a poll so taken as if it were a poll for the election of parish councillors. The appropriate rules appear to be the Parish Council Election Rules, 1949, and, as I understand the position, will apply to the poll, as will also by virtue of s. 54 (2) of the 1933 Act, part IV of the Municipal Corporations Act, 1882, and the Municipal Elections (Corrupt and Illegal Practices) Acts, 1884 and 1911, and *quaere* s. 43 (5) of the Representation of the People Act, 1948. Section 18 of the Corrupt and Illegal Practices Prevention Act, 1883, which requires election placards to bear the name and address of the printer and publisher, is incorporated into the 1884 Act and is extended by s. 43 (5) of the 1948 Act.

The question arises—(*a*) whether any literature printed and published by any person or body of persons interested in the question to be decided at the poll requires to bear the name of the printer and publisher; (*b*) if so, and the names are omitted, what is the nature of the offence committed, and by whom and in what court should proceedings be instituted; (*c*) if an offence is proved will the result of the poll be invalidated. APOLL.

Answer.

(*a*) Yes.

(*b*) By s. 14 of the Act of 1884 (there being no candidate and therefore not an "illegal practice") a summary offence punishable thereunder.

(*c*) No.

9.—Public Health Act, 1936—*Refuse collected for pigs—Removal by unauthorized person.*

I am prosecuting for the local authority in a charge against a man who was caught in the act of emptying pig-swill from a bin belonging to the council, which had been placed on an estate for the purpose of collecting kitchen refuse. He was depositing the contents on to a cart apparently for the use of his own pigs. When confronted he said he was a ratepayer and was entitled to take the pig-swill "as the others were doing"—referring to other residents. He had been warned before about this action.

I should be obliged for your opinion with your authority, if possible, on:—

(*a*) the possibility of the defence of a claim of right;

(*b*) the question of ownership of the contents of the bin. ARBIN.

Answer.

(*a*) Such a defence would in our opinion be merely impudent—*cf.* the case about trespass upon railway property with which we dealt at 112 J.P.N. 697.

(*b*) We consider that the property is in the local authority, but need this question be gone into? Section 76 (3) (*b*) of the Public Health Act, 1936, seems exactly to fit the facts described.

10.—Rating and Valuation Act, 1925, ss. 5 and 37—*Altering rate book to conform to valuation list.*

I shall be glad if you will let me have an opinion on the application of s. 5 of the Rating and Valuation Act, 1925, in relation to an error as between the incorrect value of certain property in the rate book and the correct value as shown in the valuation list. The error occurred in 1947 and has only just been brought to light. On August 22, 1947, the rating authority made a proposal to increase the rateable value and on November 5, 1947, an increase of £6 over the former assessment was allowed. The valuation list was amended, but both the rating authority's summary of proposals and the assessment committee's record of totals were not amended to include this increase, neither was effect given to the increase in the rate book, with the result that the occupiers of the property have not been charged on the additional £6 rateable value, which became effective from April 1, 1947, in accordance with s. 37 (10) of the Rating and Valuation Act, 1925. Section 5 of the Act provides that a rating authority may at any time make any such amendments in a rate, being either the current or last preceding rate, as appear to them necessary to make the rate conform with the provisions of that part of the Act and any other enactments relating thereto, and, in particular, may:—

(*a*) correct any clerical or arithmetical error in the rate,

(*b*) correct any erroneous insertions or omissions or any mis-descriptions.

Section 5 (2) states that every amendment made under paragraphs (*a*) or (*b*) should have effect as if it had been contained in the rate as originally made. Can the rating authority recover the rate from April 1, 1947, or do the words "either the current or last preceding rate" preclude recovery of the rate prior to the last preceding rate? ARV.

Answer.

The proviso in s. 5 (1) shows that the section applies to an alteration in the rate made necessary by an alteration in the list and thus the parenthesis in the second line governs such an alteration, and the rating authority cannot go back beyond the last preceding period.

11.—Town and Country Planning Act, 1947—*Change of use—Car standing in carriage drive of residence.*

Further to P.P. 14, at 113 J.P.N. 686, does the following reference seem to you to be of further assistance in this matter? *Viz.* Selected Appeal Cases issued by Ministry of Town and Country Planning, in September 1949) No. VI, at p. 12. ALF.

Answer.

Yes. The answer at 113 J.P.N. 686 had been settled before this collection of decisions became available. The planning authority had referred permission for a carriage crossing from the roadway to the garden of the house, upon the ground that, so long as a garage could not be provided because of building restrictions, the car would have to stand in the garden, which they regarded as being injurious to amenity. The Minister of Town and Country Planning allowed an appeal. This is not the question put to us at p. 686, which related to the necessity of planning permission for standing one kind of car in the garden instead of another, but we think the decision supports our own view, and we are obliged to our correspondent for calling our attention to it.

OFFICIAL ADVERTISEMENTS, TENDERS, ETC. *(contd.)*

NEW FOREST RURAL DISTRICT COUNCIL

Clerk's Department

APPLICATIONS are invited for the appointment of a Legal and Administrative Assistant, Grades A.P.T. III and IV of the National Scales of Salaries (£450—£525).

Applicants must have had substantial previous experience in a Clerk's Department, and the person appointed will be required to carry out such duties, whether of a legal or an administrative nature, as may from time to time be assigned to him.

The appointment is subject to: (*a*) the Local Government Superannuation Act, 1937, (*b*) the National Scheme of Conditions of Service and (*c*) termination by one month's notice to expire at the end of a calendar month.

The Council will be prepared to consider an application for housing accommodation, in the case of a married candidate.

Applications, giving full details of age, experience and qualifications, together with copies of not more than three recent testimonials, should reach the undersigned by Wednesday, April 12, 1950.

H. S. PRING,
Acting Clerk.

Council Offices,
Lyndhurst, Hants.
March 16, 1950.

CITY OF LEEDS

Town Clerk's Department—Assistant Solicitor

APPLICATIONS are invited for the appointment of an Assistant Solicitor in the Office of the Town Clerk at a salary in accordance with the Scales adopted by the National Joint Council for Local Authorities' Administrative, Professional, Technical and Clerical Services, namely:—

(*a*) If newly admitted—Grade A.P.T. V (a) (£550—£610 per annum);

(*b*) If not less than two years' legal experience after date of admission—Grade A.P.T. VII (£635—£710 per annum).

Candidates should have some experience in advocacy and have a knowledge of conveyancing. The commencing salary will be fixed according to qualifications and experience. The appointment is subject to the provisions of the Local Government Superannuation Act, 1937, and the successful applicant will be required to pass a medical examination.

Applications, stating age, date of admission and particulars of experience, together with two recent testimonials, must reach the undersigned not later than April 17, 1950, endorsed "Assistant Solicitor."

Canvassing in any form, either directly or indirectly, will be a disqualification.

O. A. RADLEY,
Town Clerk.

Civic Hall,
Leeds, 1.
March, 1950.

SITUATION VACANT

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W. S. DES FORGES,
Town Clerk.

Town Hall,
Wakefield.
March 24, 1950.

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